

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>FAMILY TREE FOUNDATION,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PROPERTY TAX ADMINISTRATOR.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Karen L. Barsch, Esq. Faegre &amp; Benson LLP</p> <p>Address: 3200 Wells Fargo Center 1700 Lincoln Street Denver, Colorado 80203</p> <p>Phone Number: (303) 607-3652</p> <p>E-mail: kbarsch@faegre.com</p> <p>Attorney Reg. No.: 16771</p>	<p><b>Docket Number: 42536</b></p>
<p style="text-align: center;"><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on February 13, 2004, Debra A. Baumbach and Diane M. DeVries presiding. Petitioner was represented by Karen L. Barsch, Esq. Respondent was represented by Larry A. Williams, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**File No. 30-01884-03 and File No. 30-01884-05  
5549 Marshall Street, Arvada, Colorado**

Petitioner is protesting Respondent's denial of property tax exemption for tax year 2003. The Petitioner is a non-profit organization with tax-exempt status under section 501(c)(3) of the Internal Revenue Code. It is an organization dedicated to helping those in need be safe, strong and self-reliant. Within Petitioner's Housing and Family Services section transitional housing is provided to families in need. It provides intensive home-based case management and counseling services to homeless and abused individuals and families in order to assist them in becoming self-sufficient. The subject properties consist of two single-family residences that provide transitional housing to families in need.

## **ISSUES:**

### **Petitioner:**

The Petitioner stated that the tax-exempt status for the subject properties was denied solely because the properties were vacant on the assessment date. The subject properties were occupied by qualified residents from May 30 and June 20, 2003, respectively, through December 31, 2003.

### **Respondent:**

Respondent contends that the properties must be occupied on the January 1 date of assessment of each year.

## **FINDINGS OF FACT:**

1. The parties stipulated that 1) the Petitioner is a 501(c)(3) charitable organization; 2) the properties have never been used for private gain or corporate profit; 3) the properties have been used solely and exclusively for strictly charitable purposes; and 4) the properties were vacant on January 1, 2003, and were occupied during 2003 as described in the timeline, Petitioner's Exhibit A, page 69.

2. The Petitioner did not present any witnesses since they believe that the issue is a legal issue as to whether the subject properties are required to be occupied on the date of assessment, January 1 of any given year.

3. Respondent's witness, Stan Gueldenzopf, Manager of the Exemption Section of the Division of Property Taxation, testified that the Petitioner submitted the Owner's Occupancy Report shown in Respondent's Exhibit 1 and 2 on the subject properties stating that the subject properties were vacant on the date of assessment, January 1, 2003. He testified that the occupancy formula is mandated by state statutes.

4. Mr. Gueldenzopf testified, on cross-examination, that if there were one vacancy in a five-unit apartment building, the property would still be 100% exempt. An apartment is not

penalized. He testified that he is to adhere to a formula of qualified and non-qualified residents to determined percentage of exemption.

## **CONCLUSIONS:**

1. The Board requested that the parties submit their closing arguments in writing to the Board. Both parties submitted written closing arguments.

2. Petitioner presented sufficient probative evidence and testimony to prove that the subject properties were incorrectly valued for tax year 2003.

3. The Board determined that the Petitioner originally filed for a tax exemption of the subject properties at issue in 1995, the same year the properties were purchased, and the subject properties had remained tax exempt until 2003. The Petitioner filed its annual report in order to maintain the tax-exempt status. The tax exemption was revoked on two of the properties solely because the homes were vacant on January 1, 2003. The subject properties consist of two single-family homes and the Petitioner does not dispute that the properties were vacant on January 1, 2003.

4. CRS 39-3-101 provides a presumption that property is used for strictly charitable purposes and not for private gain. The Board believes that the subject properties comply with CRS 39-3-101 as well as CRS 39-3-112(2) and CRS 39-2-112(3). The legislative declaration on CRS 39-3-101 sets out three requirements for tax exemption: 1) that the use be one of the designated uses in part 1; 2) that the property be used solely and exclusively for strictly charitable purposes; and 3) that the property not be used for private gain or corporate profit. The Board determined that the Petitioner has met the legislative declaration of these three requirements of tax exemption. The Petitioner provides a transitional housing facility which is a use identified in part 1, the parties stipulated that the Petitioner is a 501(c)(3) charitable organization and that the subject properties were vacant on the date of assessment but were occupied as set forth in Petitioner's Exhibit A, page 69. The parties stipulated that the subject properties have been used solely and exclusively for strictly charitable purposes. And finally, that the parties stipulated that the subject properties have never been used for private gain or corporate profit.

5. The Board determines that the Petitioner is unduly penalized when the Respondent relies on CRS 39-3-112(4). The pure nature of the Petitioner's exemption is transitional housing. A qualified resident could leave on December 31 and the Petitioner may not have a qualified resident move in until February 1. If the Respondent relies strictly on the date of assessment of January 1, the Petitioner is penalized an entire year for having a vacancy on January 1. The Board believes that this is not the legislation intended, but rather tax exemption of the properties should be reviewed for the entire year. The Respondent's witness stated that other types of residential property are not penalized if they have a vacancy on the date of assessment. Respondent's witness testified that other types of residential property are not penalized.

6. The Board determines that *Pilgrim Rest Baptist Church v. Property Tax Administrator*, 971 P.2d270 (Colo.App.1998) is on point in this case. Pilgrim Rest Baptist Church, even though it is a church, used their property only a few times a year. The Board agrees that the

Petitioner in this case was unduly harmed. January 1 is not determinative of tax-exempt status.

7. For the above-stated conclusions, the Board determines that the subject properties are tax-exempt for tax year 2003.

8. In the Respondent's written closing argument, the Respondent requested statewide concern should the Board find in favor of the Petitioner. The Board grants the Respondent's request.

**ORDER:**

Respondent is ordered to grant exemption of the subject properties for tax year 2003.

**APPEAL:**

If the above decision of the Board is against the Petitioner, the Petitioner may petition the Court of Appeals for judicial review thereof according to the Colorado Appellate Rules and the provisions of Section 24-4-106 (11) CRS. If the above decision of the Board is against the Respondent, the Respondent, upon the recommendation of the Board that it is a matter of statewide concern, may petition the Court of Appeals for judicial review according to the Colorado Appellate Rules and the provisions of section 24-4-106 (11) CRS.

DATED and MAILED this 12<sup>th</sup> day of March, 2004.

**BOARD OF ASSESSMENT APPEALS**

*Debra A. Baumbach*

Debra A. Baumbach

*Diane M. DeVries*

Diane M. DeVries

This decision was put on the record

MAR 11 2004

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

*Perry S. Lowenthal*  
Perry S. Lowenthal

